

SJ 22: Study of family law procedures and alternatives

Preliminary Bill Drafts (not yet formally requested as committee bills)

For discussion in June 2014

Draft Number	Concept	Status	Drafter	Committee Action?
LClj01	Adjust debt limit allowed for an uncontested divorce	Preliminary draft -- needs a debt limit	Weiss	
LClj02	Eliminate requirement for a hearing before a judge enters final dissolution decree in certain cases	Preliminary draft -- not yet approved as formal committee bill	Burkhardt	
LClj03	Clarify who must move to amend parenting plan when one parent relocates	Preliminary draft -- not yet approved as formal committee bill	Burkhardt	
LClj04	Allow husband to restore original name as part of dissolution filing	Preliminary draft -- not yet approved as formal committee bill	Weiss	
LClj05	Require district courts to adopt local rules requiring mediation	Preliminary draft (revised 6/3) -- not yet approved as formal committee bill	Weiss	
LClj06	MT pilot project to offer paid mediation to certain family law litigants	Preliminary draft (revised 6/3) -- not yet approved as formal committee bill	Weiss	

Last updated June 10, 2014

Law and Justice meeting
June 27, 2014

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As of: April 15, 2014 (9:20AM)

LC1j01

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act amending the amount of unpaid, unsecured obligations that the parties to a summary dissolution proceeding may have; and amending section 40-4-130, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-130 , MCA, is amended to read:

"40-4-130. Summary dissolution -- conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) The wife is not pregnant and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) the parties have executed an agreed-upon parenting plan and

the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.

(4) (a) Except as provided in subsection (4) (b), neither party has any interest in real property.

(b) The limitation of subsection (4) (a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid, unsecured obligations in excess of ~~\$8,000~~ \$XXXX incurred by either or both of the parties after the date of their marriage.

(6) The total fair market value of assets, excluding secured obligations, is less than \$25,000.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in

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40-4-136.

(11) The parties desire that the court dissolve the marriage."

{ Internal References to 40-4-130:

40-4-130x *	40-4-131x	40-4-132x *	40-4-133 x
40-4-135x	40-4-136x *	40-4-136x *	40-4-136 x*
40-4-136x *	4/7		

}

- END -

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As of: February 11, 2014 (12:46pm)

LC1j02

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for a decree of dissolution without a hearing when the dissolution is uncontested."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-108, MCA, is amended to read:

"40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution in the book

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As of: February 11, 2014 (12:46pm)

LC1j02

in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of dissolution in the appropriate record.

(4) In an uncontested dissolution, either party may request entry of a decree of dissolution without a hearing. The non-requesting party has 10 days to object to entry of the decree of dissolution. If no objection is filed within 10 days, the court shall enter the decree of dissolution.

~~(4)~~(5) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the wife's maiden name or a former name restored."

{ Internal References to 40-4-108: None. }

- END -

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing that a parent who is moving is responsible for filing the motion to amend the parenting plan in the event the parents cannot agree to a change to the residential schedule."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-217, MCA, is amended to read:

"40-4-217. Notice of intent to move. (1) A parent who intends to change residence shall, unless precluded under 40-4-234, provide written notice to the other parent.

(2) If a parent's change in residence will significantly affect the child's contact with the other parent, notice must be served personally or given by certified mail not less than 30 days before the proposed change in residence and must include a proposed revised residential schedule. Proof of service must be filed with the court that adopted the parenting plan. Failure of the parent who receives notice to respond to the written notice ~~or to seek amendment of the residential schedule pursuant to 40-4-219~~ or notify the court that adopted the parenting plan of the disagreement within the 30-day period constitutes acceptance of the proposed revised residential schedule.

(3) If the parties do not agree to the proposed change in

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LC1j03

residence and the proposed revised residential schedule, the
parent who is moving is responsible for filing a motion to amend
the parenting plan pursuant to 40-4-219 with the court that
adopted the parenting plan."

{ Internal References to 40-4-217:
40-4-234 45-5-632 }

- END -

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As of: April 15, 2014 (9:22AM)

LC1j04

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act allowing a husband to request restoration of a former name in a dissolution proceeding; and amending section 40-4-108, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-108 , MCA, is amended to read:

"40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution in the book in which the

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As of: April 15, 2014 (9:22AM)

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marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife or a husband whose marriage is dissolved or declared invalid, the court shall order the wife's maiden name or a former name or the husband's former name restored."

{Internal References to 40-4-108: None.}

- END -

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As of: April 15, 2014 (4:07PM)

LC1j05

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring judicial districts to adopt local rules providing for mandatory mediation in parenting disputes; and amending section 40-4-301, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Mandatory mediation of parenting disputes.** (1) (a) Unless mediation is prohibited under 40-4-301(2), each judicial district shall issue a local rule that mandates early mediation of all cases in which a party files a petition for temporary or permanent child support, for enforcement of an existing child support order, for the entry of an interim or permanent parenting plan, or for modification of an existing parenting plan.

(b) The mediation must be initiated no less than 60 days after the petition is filed.

(2) If the mediation fails to produce an agreement on all disputed parenting matters, the local rule may provide that the matter be submitted to a special or standing master for resolution pursuant to Rule 53, Montana Rules of Civil Procedure. The court shall establish minimum standards for the appointment of a special or standing master, including familiarity with family law and the extent of required judicial experience.

(3) (a) Each judicial district shall maintain a list of certified family mediators who meet the minimum qualifications set forth in 40-4-307 and, in addition, who have at least 40 hours of training in basic mediation and training in family law, domestic violence, early childhood development, and substance abuse.

(b) A district court may waive the requirements in subsection (1)(a) for good cause shown.

(c) Parties may select any mediator who meets the minimum qualifications of 40-4-307.

(d) If the parties have not agreed to the selection of a mediator within 7 days of the issuance of the order of referral, the court shall appoint a certified family mediator on a random, rotating, or other equitable basis.

(4) The parties shall share the costs of the mediation and use of the special or standing master in accordance with a fee schedule to be established by the district court and based on the income and resources of the parties. To be eligible for appointment by the court, a mediator or special or standing master must agree to comply with the courts fee schedule.

Section 2. Section 40-4-301 , MCA, is amended to read:

"40-4-301. Family law mediation -- exception. (1) The Except as provided in [section 1], the district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to

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mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) Unless each of the parties provides written, informed consent, the court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party. A mediation conducted under this subsection may be conducted by a mediator who is trained in mediating domestic violence cases.

(3) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement this part.

(5) For purposes of this section, "informed consent" means an educated, competent, and voluntary choice to enter into mediation."
{ Internal References to 40-4-301:

40-4-215 40-4-302 40-4-303 40-4-306 }

- END -

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LC1j06

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing a pilot program to provide mediation in family law cases in certain judicial districts; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Family mediation pilot project.** (1)

Subject to available funding, the supreme court may administer a pilot project to help district courts provide access to mediation to resolve parenting and visitation disputes.

(2) If a pilot project is established, the supreme court shall:

(a) develop application and review criteria to select district courts to participate in the program;

(b) establish goals, objectives, and policies for district courts selected for the pilot project, including mediator qualifications, a process to assign mediators to a case, and confidentiality standards;

(c) develop a mediation rate schedule to reimburse mediators and to set the hourly rate litigants will pay if they require more hours of mediation than the pilot project will provide; and

(d) establish evaluation criteria for the pilot project and collect data to evaluate the pilot project according to the criteria.

(3) The pilot project must, to the extent that funds are appropriated for the operation of the project, provide up to 6 hours of mediation to litigants involved in a parenting or visitation dispute in a judicial district that participates in the pilot project

(4) The supreme court or a district court may not require a party to participate in the pilot project if mediation is prohibited by 40-4-301(2).

NEW SECTION. **Section 2. Data and reports.** (1) The supreme court shall ensure that relevant and detailed data concerning pilot project costs and services is collected, recorded, reported, and used for program planning.

(2) If a pilot project is established, the supreme court shall report to the law and justice interim committee established in 5-5-226 before September 15 of each even-numbered year concerning the pilot project's status. Each report must include the status of the project's funding and services and any implementation problems or recommendations to the legislature.

NEW SECTION. **Section 3. {standard} Effective date.** [This act] is effective July 1, 2015.

- END -

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Summary of SJ22 Topics Heard by Law and Justice Interim Committee (LJIC)

Compiled by Rachel Weiss, Legislative Research Analyst

Last updated: June 3, 2014

July 2013

- Overview of SJ22 and staff-proposed study plan
- LJIC adopted study plan to allocate 20% of its time to the study (14.5 hours)

September 2013

- Overview of family law in Montana today
Panelists:
 - P. Mars Scott, attorney and past chair of the Family Law Section of the State Bar
 - Judge David Ortley (11th Judicial District)
 - Judge Kurt Krueger (2nd Judicial District)
 - Standing Master Brenda Desmond (4th Judicial District)
 - Lori Maloney, Clerk of the Court (2nd Judicial District)
- Overview of the District Court workload tracking system from Beth McLaughlin
- Explanation of challenges facing pro se litigants and available resources by Beth McLaughlin and Alison Paul
- Overview of family law mediation from Linda Gryczan

December 2013

- Overview/update from the Standing Committee on Self-Represented Litigants (formed by the Access to Justice Commission established by the Montana Supreme Court) from Judge Michele Snowberger (Belgrade City Court)
- Litigants' perspectives on family law in Montana (included several pro se litigants)
- Parenting guidelines in Montana
Panelists:
 - P. Mars Scott
 - Judge Snowberger
 - Cindy Thiel, attorney with Boone Karlberg in Missoula

February 2014

- Presentation of a mediation report from State Bar of Montana Justice Initiatives Committee by Brian Muldoon
- Update on court funding and workload issues from Beth McLaughlin
- Overview of a mediation pilot program in North Dakota

April 2014

- Reviewed language for possible draft bills
- Took public comments on possible draft bills

June 2014

- Presentation on collaborative law models
- Presentation from State Bar of Montana president-elect

Future Meetings

- August/September 2014
- Can request new drafts
- Can request committee bills from existing draft language
- Can take no action